

## TEACHERS' RETIREMENT BOARD

### INVESTMENT COMMITTEE

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SUBJECT: Real Estate – Responsible Contractor Policy

ITEM NUMBER: 6

ATTACHMENT(S): 2

ACTION: X

DATE OF MEETING: December 4, 2002

INFORMATION: \_\_\_\_\_

PRESENTER(S): Mike DiRé and Greg Nyland

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#### Executive Summary

At the November 6, 2002 Investment Committee Meeting, staff presented a draft Responsible Contractor Policy for the Investment Committee to consider. The policy draft generally met the expectations of the Investment Committee with two exceptions. Staff was asked to refine the section on “Neutrality”, emphasize that labor laws will be observed and add language reflecting that a contractor’s safety record will be considered in the hiring process. This revised item is enclosed and labeled “Attachment 1”.

#### Background

The following changes have been made to the policy statement:

- CalSTRS’ legal staff has reviewed and modified Section V.K., “Neutrality”. The modification recognizes the legal rights of employees to representation.
- CalSTRS’ legal staff has reviewed and modified Section III.E., “Local state and national laws” to assure that labor relations provisions of the law are observed.
- CalSTRS’ staff has reviewed and modified Section III.D., “Competitive Bidding” to assure that a contractor’s safety record will be a factor considered when selecting a contractor.

#### Recommendation

Staff and the consultant recommend approval of the revised Responsible Contracting Policy and adopt the attached resolution. The implementation date will be March 1, 2003. Staff and the consultant are available for discussion.

SUBJECT: Real Estate – Responsible Contractor Policy

Date prepared: November 18, 2002

By:

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Greg Nyland  
Investment Officer II

Approved by:

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Mike DiRe  
Director - Real Estate

Review & Concur:

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Christopher J. Ailman  
Chief Investment Officer

**California State Teachers' Retirement System  
Responsible Contractor Policy**

**I. INTRODUCTION**

The California State Teachers' Retirement System ("CalSTRS" or "the System") has a deep interest in the condition of workers employed by the System and its advisors. The System, through the Responsible Contractor Policy ("Policy") described below, supports and encourages fair wages and fair benefits for workers employed by its contractors and subcontractors, subject to fiduciary principles concerning duties of loyalty and prudence, both of which further require competitive returns on the System's real estate investments. The System endorses small business development, market competition, and control of operating costs. CalSTRS supports many of the ideals espoused by labor unions and encourages participation by labor unions and their signatory contractors in the development and management of the System's real estate investments. The System believes that an adequately compensated and trained worker delivers a higher quality product and service.

**II. DEFINITION OF A RESPONSIBLE CONTRACTOR**

A Responsible Contractor, as used in this Policy, is a contractor or subcontractor who pays workers a fair wage and a fair benefit as evidenced by payroll and employee records. "Fair benefits" are defined as including, but are not limited to, employer-paid family health care coverage, pension benefits, and apprenticeship programs. What constitutes a "fair wage" and "fair benefit" depends on the wages and benefits paid on comparable real estate projects, based upon local market factors, that include the nature of the project (e.g., residential or commercial; public or private), comparable job or trade classifications, and the scope and complexity of services provided.

**III. INITIAL REQUIREMENTS OF THE RESPONSIBLE CONTRACTING POLICY**

- A. Duty of Loyalty: Notwithstanding any other considerations, assets shall be managed for the exclusive benefit of the participants and the beneficiaries of CalSTRS. CalSTRS' as well as its advisors', duty to the participants and their beneficiaries shall take precedence over any other duty.
- B. Prudence: CalSTRS' Board, staff and advisors are charged with the fiduciary duty to exercise the care, skill, prudence and diligence appropriate to the task.
- C. Competitive Return: To comply with duties of loyalty and prudence, all investments and services must be made and managed in a manner that produces a competitive risk-adjusted return.

- D. Competitive Bidding: Contractors and their subcontractors for construction, maintenance, and services shall be selected through a competitive bidding and selection process. The purpose of this provision is to encourage fair competition and to actively seek bids from all qualified sources within an area, particularly those identified as Responsible Contractors. Advisors and their subcontractors shall create a bidding process that includes notification and invitations to bid, distributed to a broad spectrum of potential bidders, particularly those identified as Responsible Contractors. The review of the bids shall include consideration of loyalty, prudence, and competitive risk-adjusted returns (factors to be considered include experience, reputation for honesty, integrity, timeliness, dependability, fees, safety record, and the adherence to the Responsible Contracting Policy.)
- E. Local, state and national laws. All advisors, property managers, contractors, and their subcontractors shall observe all local, state, and national laws (including by way of illustration those pertaining to insurance, withholding taxes, minimum wage, labor relations, health, and occupational safety).

#### IV. SELECTION PREFERENCE OF A RESPONSIBLE CONTRACTOR

If Initial Requirements A through D (see Section III. above) are satisfied, CalSTRS expresses a strong preference that Responsible Contractors be hired.

#### V. TRANSITION, ENFORCEMENT, MONITORING, AND ADMINISTRATION

- A. Applicable Investments and Phasing: This Policy shall apply to all applicable real estate advisors. The Policy shall not apply to investments such as hybrid debt, joint ventures, opportunity funds and other real estate investments where CalSTRS does not have 100% ownership and/or full control of the investment. However, in those instances where CalSTRS does not have 100% ownership and/or full control of the investment, staff will make reasonable attempts to encourage partners to comply with the spirit and practice of Responsible Contracting.
- B. Notification: CalSTRS shall provide all applicable current and prospective real estate advisors with a copy of this Policy, including investments where CalSTRS does not have 100% ownership and/or full control of the investment.
- C. Solicitation Documents: All requests for proposal and invitations to bid covered by this Policy shall include the terms of this Policy. Responses by bidders shall include information to assist the staff in evaluating a bid.
- D. Contracts and Renewals: All contracts entered into after the effective date of this Policy and pertaining to applicable real estate investments, including renewals of such contracts, shall include the terms of this Policy.

E. Responsibilities: The responsibilities of CalSTRS' staff, advisors, property managers, contractors, and unions are defined as follows:

1. Staff: CalSTRS staff shall have the following responsibilities:

- a. Review the advisors' annual certification statement regarding compliance with the Policy.
- b. Develop and maintain contact lists for all CalSTRS' properties and provide a copy to inquiring parties.
- c. Insert appropriate contract language where applicable.
- d. In those instances where CalSTRS does not have 100% ownership and/or full control of an investment, make reasonable attempts to encourage partners to comply with the spirit and practice of Responsible Contracting.

2. Advisors: Advisors' responsibilities shall include:

- a. Communicate the Policy to all property managers.
- b. Review a contract listing for each property prepared by each property manager.
- c. Maintain a simplified bid summary for each applicable contract. The summary should include identifying contract, successful bidder, and bidder's status as Responsible Contractor.
- d. Maintain an annual report in their home office, describing their own efforts as well as those by property managers and their subcontractors.
- e. Monitor and enforce the Policy including investigation of potential violations.
- f. Annually, the signatory to the CalSTRS contract will file a certification statement that their firm complied with the Responsible Contractor Policy for the preceding year and upon request will provide written substantiation of such compliance. This provision will be subject to periodic audits.

3. Property Managers: Property managers will have responsibility for the following:

- a. Communicate in bid documents the Responsible Contractor Program Policy to contractors seeking to secure construction or building service contracts.
  - b. Communicate the Policy to any interested party.
  - c. Ensure there is a competitive bidding process that is inclusive of potentially eligible Responsible Contractors.
  - d. Require bidders to provide to property manager a Responsible Contractor self-certification on a form approved by CalSTRS.
  - e. Prepare and send to advisors a contract listing for applicable service contracts for each property under management. The building trades and service trades and other potential bidders will have access to this list.
  - f. Provide advisors with a simplified bid summary for each contract.
  - g. Provide property level annual report information to advisor.
  - h. Maintain documentation for successful bidders.
  - i. Seek from trade unions/service unions input in the development of Responsible Contractor lists.
  - j. Maintain list of any interested Responsible Contractors. (Names, addresses and telephone numbers).
4. Contractors: Contractors will have the responsibility for the following:
- a. Submit to property manager a Responsible Contractor self-certification on a form approved by CalSTRS.
  - b. Communicate to subcontractors the Responsible Contractor Program Policy.
  - c. Provide to property manager Responsible Contractor documentation.
5. Unions: Trade unions/service unions shall be asked to perform the following tasks:
- a. Deliver to the property manager or advisor lists of names and phone numbers of Responsible Contractors.
  - b. Refer interested and qualified Responsible Contractors to the property manager.

- c. Continually monitor the local labor markets to update the lists.
  - d. Provide technical input as appropriate.
- F. Outreach: CalSTRS' staff will develop and maintain a list of all CalSTRS 100% owned and/or fully controlled properties. The list will include the property name, address, advisor and property manager, and phone number of the property manager and real estate advisors. The CalSTRS' staff will provide this list to anyone who requests a copy. Actual contract expiration inquiries will be referred to the property level. Property managers shall provide solicitation documents to any potential contractor who has, in writing, expressed an interest in bidding for the relevant contract.
- G. Minimum Contract Size: The Policy shall absolutely apply to all contracts of a minimum size of \$25,000, individually or annually as applicable. Minimum contract size refers to the total project value of the work being contracted for and not to any desegregation by trade or task. For example, a \$25,000 contract to paint two buildings in a single office complex would not be treated as two \$12,500 contracts, each less than the minimum contract size. Desegregation designed to evade the requirements of the Policy is not permitted.
- H. Applicable Expenditures Categories: The Policy shall apply to tenant improvements, capital expenditures, and operational service contracts (such as cleaning).
- I. Fair Wage, Fair Benefits, Training: The Policy avoids a narrow definition of "fair wage", "fair benefits", and "training" that might not be practical in all markets. Furthermore, the Policy does not require a "prevailing wage", as defined by government surveys. Instead, the Policy looks to local practices with regard to type of trade and type of project. The Policy recognizes that practices and labor market conditions vary across the country and that flexibility in its implementation is very important.

In determining "fair wages" and "fair benefits" with regard to a specific contract in a specific market, items that may be considered include local wage practices, state laws, prevailing wages, labor market conditions, and other items.

In place of a prevailing wage standard, the Policy requires a broad outreach and competitive bidding program, as described in Section III.D, and V.F and J. This program is premised upon the availability of a list of Responsible Contractors in every market in which CalSTRS directly owns a property. While advisors and their property managers and contractors are responsible for gathering and analyzing information relevant to identifying and hiring a Responsible Contractor, compilation of this list does not depend solely on the advisors, property managers, or contractor. This

Policy instead invites the various local trades to suggest contractors, which in their view qualify as Responsible Contractors. Sources of information include local building and service trade councils, builders association, and governments.

- J. Competitive Bidding: Property managers and contractors should give notice for applicable bids in local trade publications, bulletin boards and union building trades councils. Property managers should seek input from building trades councils to develop lists of Responsible Contractors for inclusion in the bidding process.

Property managers may choose from the list of Responsible Contractors a reasonable number of contractors to be invited to bid. Given the time and expense required to solicit and evaluate bids, it is not essential that advisors, property managers, and contractors invite all potential bidders.

The property manager must ensure that there is a competitive bidding process, which is inclusive of potentially eligible Responsible Contractors. Inclusion is not necessarily assured by large numbers of bidders. Care must be taken that bidders include potentially eligible Responsible Contractors.

Although the Policy does not require hiring union workers, the trade unions will be invited to (1) deliver to the property manager or advisor lists of names and phone numbers of Responsible Contractors including those Responsible Contractors who have expressed any interest in bidding, and (2) continually monitor the local markets to update the lists. Property managers shall maintain these lists supplied by the trade unions.

- K. Neutrality: CalSTRS recognizes the rights of employees to representation, and supports and strongly encourages a position of neutrality, in the event there is a legitimate attempt by a labor organization to organize workers employed in the construction, maintenance, operation, and services at a CalSTRS owned property.

Resolution of any interjurisdictional trade disputes will be the responsibility of the trades and the various state and national building trades councils. This Policy does not call for any involvement by the advisors, property managers, or contractors in interjurisdictional trade disputes.

- L. Enforcement: If Staff becomes aware of non-compliance, this System will place a non-complying advisor or property manager on a probation watch list. If the advisor or property manager does not modify this pattern of conduct even after discussions with CalSTRS' staff, the System will consider this pattern of conduct along with other information when it reviews the advisor or property manager contract for possible renewal. The key indicator is a pattern of conduct that is inconsistent with the provisions of the Policy.



Staff will address Responsible Contractor Policy compliance as part of the *Real Estate Annual Review and Rating of Managers*.

RESOLUTION OF THE  
TEACHERS' RETIREMENT BOARD  
INVESTMENT COMMITTEE

SUBJECT: Real Estate – Responsible Contractor Policy

Resolution No. \_\_\_\_\_

WHEREAS, the Board is responsible for managing the Teachers' Retirement Fund (Fund), a Pension Fund; and

WHEREAS, the Board has delegated to the Investment Committee (Committee) the authority to develop and implement Investment Policies and Management Plans, including policies for individual asset classes such as Real Estate; and

WHEREAS, the Committee directed Staff to develop a Responsible Contractor Policy; and

WHEREAS, the Committee has reviewed the proposed Responsible Contractor Policy developed by Staff; and

WHEREAS, Staff and consultant recommend approval of the Responsible Contractor Policy; Therefore be it

RESOLVED, that the Investment Committee approves the adoption of the Responsible Contractor Policy as presented by Staff on this date.

Adopted by:

Investment Committee  
on December 4, 2002

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Jack Ehnes  
Chief Executive Officer